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Counsel for Debtor Cash Cloud Inc.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

CASH CLOUD, INC.,
 dba COIN CLOUD,

Debtor.

Case No. BK- 23-10423-mkn

Chapter 11

**OPPOSITION TO MOTION FOR APPROVAL
 OF ADMINISTRATIVE CLAIM OF
 POPULUS FINANCIAL GROUP, INC.**

Hearing Date: October 19, 2023

Hearing Time: 10:30 a.m.

Cash Cloud, Inc. d/b/a Coin Cloud (“Debtor”), debtor and debtor-in-possession in the above-captioned Chapter 11 case (the “Chapter 11 Case”), by and through its undersigned counsel, Fox Rothschild LLP, hereby files this Opposition To Motion For Approval Of Administrative Claim Of Populus Financial Group, Inc. (the “Opposition”). This Opposition is based upon 11 U.S.C. § 105(a), § 502, and § 503, Fed.R.Bankr. P. 3001 and 3007, and Local Rule 3007, the following Points and Authorities, the Declaration of Daniel Ayala (“Ayala Declaration”), the pleadings on file in this case, and any arguments entertained by the Court at any hearing pertaining to this matter.

POINTS AND AUTHORITIES

I. Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Factual Background

3. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on February 7, 2023 (the “Petition Date”).

4. The deadline for filing a proof of claim in this case is June 14, 2023. The deadline for filing a proof of claim for a governmental unit is August 7, 2023.

5. On June 14, 2023, the Debtor filed the *Eighth Omnibus Motion for Entry of Order Approving Rejection of Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365(a)* (the “Eighth Omnibus Motion to Reject”) [ECF 672]. The Eighth Omnibus Motion to Reject listed the agreements between the Debtor and Populus Financial Group, Inc. (which was listed as ACE Cash Express) as agreements to be rejected as of June 14, 2023.

6. On June 29, 2023, Debtor filed an *Emergency Motion For Entry Of An Order Establishing Administrative Claim Bar Date For Filing Proofs Of Administrative Expense Claim And Approving Form, Manner And Sufficiency Of Notice Thereof; Memorandum Of Points And Authorities In Support Thereof* requesting that a deadline of July 20, 2023 be set for the filing of administrative expense claims. [ECF 789].

7. On July 11, 2023, an *Order Establishing Administrative Claim Bar Date For Filing Proofs Of Administrative Expense Claim And Approving Form, Manner And Sufficiency Of Notice Thereof* was entered. [ECF 823].

8. On July 20, 2023, Populus Financial Group, Inc. (“Populus”) filed a *Motion for Approval of Administrative Claim of Populus Financial Group, Inc.* (the “Motion”) [ECF 900] requesting allowance of an administrative claim in the amount of \$90,838.97 for rents not paid to it for the period of May through July 2023.

9. Populus did not set a hearing on its Motion.

10. On July 26, 2023, an *Order Granting Eighth Omnibus Motion for Entry of Order Approving Rejection of Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365(a) And Setting Rejection Damages Claim Deadline* was entered (“Order Granting Eighth Omnibus Motion To Reject”) [ECF 938]. The Eighth Omnibus Motion Order provides, in significant part,

1 that the Debtor's rejection of the Contracts and/or Leases listed therein was effective as of the date
2 of the filing of the motion, or June 14, 2023.

3 III. Memorandum of Law

4 The burden of proving an administrative expense claim is on the claimant. *In re DAK*
5 *Industries, Inc.*, 66 F.3d 1091, 1094 (9th Cir. 1995). Section 503(b) provides that an administrative
6 expense claim be allowed for "the actual, necessary costs and expenses of preserving the estate." 11
7 U.S.C. § 503(b)(1)(A); *see also Burlington No. Railroad Co. v. Dant & Russell, Inc. (In re Dant &*
8 *Russell, Inc.)*, 853 F.2d 700, 707 (9th Cir. 1988).

9 The statute is explicit. Any claim for administrative expenses and costs must be the
10 actual and necessary costs of preserving the estate for the benefit of its creditors.
11 *Matter of Baldwin-United Corporation*, 43 B.R. 443, 451 (S.D. Ohio 1984). The terms
12 "actual" and "necessary" are construed narrowly so as "to keep fees and administrative
13 costs at a minimum." *In re O.P.M. Leasing Services, Inc.*, 23 B.R. 104, 121
14 (Bankr.S.D.N.Y.1982); *see also* 3 Collier on Bankruptcy, p 503.04, at 503-23 (15th
15 ed. 1988). An actual benefit must accrue to an estate. . . . Additionally, keeping costs
16 to a minimum serves the overwhelming concern of the Code: Preservation of the
17 estate.

18 *Dant & Russell, Inc.*, 853 F.2d at 706 (citations omitted; footnote omitted).

19 Populus claims that it is owed the total amount of \$90,838.97 for the months of May through
20 July 2023. The Debtor agrees that Populus is entitled to an administrative claim, but only for the
21 period of May 1, 2023 through and including June 13, 2023 in the amount of \$49,813.40. The
22 agreements with Populus were rejected pursuant to the Order Granting Eighth Omnibus Motion To
23 Reject, with such rejection being effective as of June 14, 2023. As such, any claim after June 14,
24 2023 must be disallowed.

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CONCLUSION

Based upon the foregoing, Cash Cloud respectfully requests that the Court deny the Motion in that it requests allowance of an administrative claim in the amount of \$90,838.97 but allow Populus an administrative claim in the reduced amount of \$49,813.40.

Dated this 20th day of September, 2023.

FOX ROTHSCHILD LLP

By: /s/ Jeanette E. McPherson

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